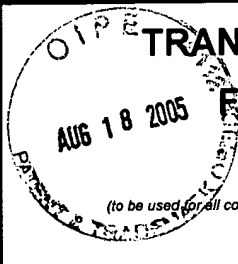


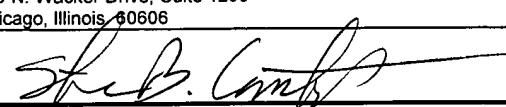
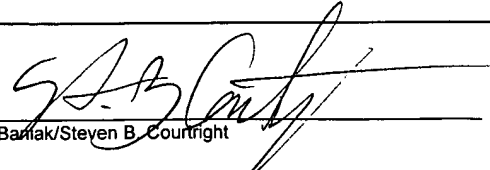
AF
DW

	Attorney Docket No.	5297/32-2
	Application Number	08/203,672
	Filing Date	February 28, 1994
	First Named Inventor	Brian H. SILVER
	Group Art Unit	2814
	Examiner	Trinh, V.

ENCLOSURES (check all that apply)		
<input type="checkbox"/> Amendment / Response to Restriction/Election Req. <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Status Letter <input type="checkbox"/> Extension of Time Request (duplic) <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement, PTO-1449, art <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/ Incomplete Application	<input type="checkbox"/> Assignment Papers (for an Application) <input type="checkbox"/> Drawings: <input type="checkbox"/> After Allowance Communication to Group <input type="checkbox"/> Petition Routing Slip (PTO/SB/69) and Accompanying Petition <input type="checkbox"/> To Convert a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Applicant claims small entity status. <input type="checkbox"/> Request of Refund	<input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input checked="" type="checkbox"/> Appeal Communication to Group (Reply Brief in response to Examiner Answer mailed May 16, 2005) <input type="checkbox"/> Proprietary Information <input checked="" type="checkbox"/> Post Card Receipt <input type="checkbox"/> Additional Enclosure(s) (please identify below): <div style="border: 1px solid black; height: 20px; width: 100%;"></div> <div style="border: 1px solid black; height: 20px; width: 100%;"></div> <div style="border: 1px solid black; height: 20px; width: 100%;"></div>
<input checked="" type="checkbox"/> The Commissioner is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account No. 50-0930. A duplicate copy of this sheet is enclosed.		

CALCULATION OF FEE

					Small Entity		or	Large Entity	
	Claims After Amendment		Highest No. Previously Paid For	Present Extra	Rate	Add'l Fee		Rate	Add'l Fee
Total		Minus	(20)	0	x \$25=	0		x \$50=	
Indep.		Minus	(3)	0	x \$100=	0		x \$200=	
First Presentation of Multiple Dep. Claim					+\$180=	—		+\$360=	
					total add'l fee	\$ 0		total add'l fee	\$ 0

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT			
Firm or Individual name	Michael H. Baniak, Reg. No. 30,608 Attorney for Applicant(s) Steven B. Courtright, Reg. No. 40,966 Agent for Applicant(s) BANIAK PINE & GANNON 150 N. Wacker Drive, Suite 1200 Chicago, Illinois 60606		
Signature		Date:	August 16, 2005
CERTIFICATE OF MAILING			
I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop: Appeal Brief-Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450			August 16, 2005
Signature	 Michael H. Baniak/Steven B. Courtright		Date: August 16, 2005



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PATENT
5297/32-2

Steven B. Courtright

Signature

August 16, 2005

Date of Signature

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

BRIAN H. SILVER AND GOTTHILF WENIGER

Serial No. 08/203,672

Filed: February 28, 1994

Title: DISPOSABLE MILK COLLECTING BAG FOR A
BREAST PUMP

Examiner: Trinh, V.

Group Art Unit: 2814

Reply Brief

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This is a Reply Brief in response to the Examiner's Answer mailed May 16, 2005. A Petition for Extension of Time was timely filed under § 1.136(b) to extend the period to reply to August 16, 2005.

Preliminary Remarks

As a preliminary matter, the Examiner's statement of the status of the amendments and claims appealed is confirmed as correct, in that the Amendment after final rejection filed on June 24, 2003, was not entered and not on appeal. The claims which Applicants should have stated as being under consideration in this appeal are reproduced below (and are accurately represented by the Examiner in her brief).

Listing of Claims Appealed:

20. A disposable bag adapted to contain breast milk, comprising a flexible closed enclosure defining a chamber adapted to contain therein breast milk, said enclosure being permanently sealed except at one portion thereof which comprises a bag access adapted to substantially seal said bag in a first position thereof but also adapted to selectively allow in a second position thereof the breast milk to be introduced in said chamber when it is desired to use said bag, whereby once in said second position the breast milk can be received in said bag, wherein said bag comprises a section located remote from said enclosure and adapted for receiving thereon information about a content of said bag.

21. A disposable bag as defined in claim 20, wherein said section comprises at least a first area for indicating thereon a date of filling of said enclosure with breast milk.

22. A disposable bag as defined in claim 21, wherein said section also comprises a second area for indicating thereon a volume of breast milk introduced in said enclosure.

23. A disposable bag as defined in claim 20, wherein said bag is made from a plastic tube permanently closed at a lower end thereof by a lower seal thereby delimiting a bottom end of said enclosure, said section extending from said lower seal away from said enclosure.

24. A disposable sterile plastic bag in combination with a bag holder, said bag being adapted to contain milk, said bag holder comprising a hollow body and a cap provided with a nipple and being adapted for feeding a baby, said bag holder being adapted for receiving therein said bag, said bag comprising a flexible closed enclosure defining a chamber adapted to contain milk therein, said enclosure being permanently sealed except at one portion thereof which comprises a bag access adapted to substantially seal said bag in a first position thereof but also adapted to selectively allow in a second position thereof the milk to be introduced in said chamber when it is desired to use said bag, wherein, once in said second position, a top end of said bag can be folded over an upper end of said bag holder with said cap being engageable to said upper end of said bag holder for imprisoning said top end of said bag between said cap and said upper end of said bag holder such that said bag hangs in said bag holder with milk being introduced in said bag at least one of before and after said bag is inserted in said bag holder and mounted thereto, wherein said bag comprises a section located remote from said enclosure and adapted for receiving thereon information about a content of said bag.

25. A method of substantially sterile handling breast milk, comprising the steps of:

- a) providing a closed disposable sterile bag comprising a tear off strip and providing a bag holder;
- b) removing said tear off strip to reveal a milk receiving chamber of said bag; and
- c) mounting said bag to said bag holder; wherein milk is introduced in said chamber between said steps b) and c) or after step c).

26. A method as defined in claim 25, wherein after step b), said bag is attached to a breast pumping device such that breast milk retrieved by said pumping device is directly delivered through into said bag.

REMARKS AND ARGUMENTS IN REPLY

Claims 20-26 are on appeal. Claims 20-26 are copied verbatim from U.S. Patent No. 6,328,082 issued December 11, 2001 to Danielle Lafond (“Lafond”). Specifically, present Claims 20-26 correspond to Claims 1-4, 18 and 25-26 issued to Lafond.

In the present application, Claims 20-23 were rejected under 35 U.S.C. § 102 (b) as being anticipated by U.S. Patent No. 3,905,477 to Graham (“Graham”). Claims 25-26 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,600,104 to Yanase (“Yanase ‘104”). Claims 20-24 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,634,006 to Yanase (“Yanase ‘006”) in view of Graham.

Why Graham cannot anticipate Claims 20-23 under § 102(b)

Claims 20-23 were rejected under 35 U.S.C. § 102 (b) as being anticipated by U.S. Patent No. 3,905,477 to Graham (“Graham”). For Graham to anticipate Claims 20-23, it must show each and every element of these claims.

These claims recite a disposable bag adapted to contain breast milk. The bag comprises a flexible closed enclosure. The enclosure is permanently sealed except at one portion. The portion comprises a bag access adapted to substantially seal the bag in a first position thereof but also adapted to selectively allow in a second position thereof the breastmilk to be introduced.

So, it can be seen that the claim specifies the bag includes an enclosure, with a portion having a bag access. The bag access, which is a portion of the enclosure itself, is adapted to seal the bag in a first position, and allows breastmilk to be introduced in a second position.

In contrast, Graham is directed to a bag designed for receiving and storing blood. Since blood is delivered with a narrow tube, the bag of Graham teaches use of a pair of tubes (29, 31) formed with the bag to permit attachment to the delivery tube. After receiving the blood, the bag of Graham is closed with a “plug or clamp means.” Graham teaches use of plugs or clamps with the bag tubes to open or close the tubes by affixing a clamp onto or inserting a plug into the tube.

Since Graham does not teach using a bag access portion of the enclosure itself in first and second positions to respectively seal or permit access to the bag, it cannot anticipate Claims 20-23. Accordingly, the rejection under § 102(b) based on Graham is incorrect.

Why Yanase '104 or '106 cannot be used in rejecting the claims under § 102(b)

It has been noted that claims identical to present Claims 20-26 were allowed and issued in the Lafond patent (corresponding to Claims 1-4, 18 and 25-26). Significantly, U.S. Patent No. 4,634,006, to Yanase ("Yanase '006") was cited in the prosecution of the Lafond patent. Yanase '006 is a continuation-in-part application of U.S. Patent No. 4,600,104, to the same inventor, Yanase ("Yanase '104"). Yanase '006 contains all of the subject matter of Yanase '104. Both patents claim priority back to the same Japanese application (JP 58-87257).

Since the U.S. Patent Office has already made the determination that Claims 20-26 are patentable over the subject matter of Yanase '006, it cannot now take the position that identical Claims 25-26 are unpatentable under 35 U.S.C. § 102(b) over Yanase '006 (or Yanase '104). This rejection must be deemed erroneous.

Why Yanase '104 or Yanase '006 does not supply the deficiencies of Graham

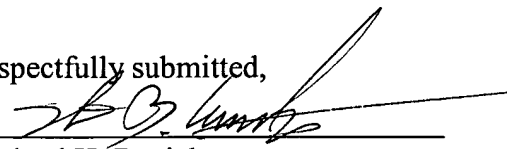
With respect to the rejection under § 103(a) Yanase teaches the use of adhesive tape or a clip to seal a bag after it is opened by tearing or use of scissors, for example. Since neither of Yanase '104 nor '006 teaches using a bag access portion of the enclosure itself in first and second positions to respectively seal or permit access to the bag it does not supply the deficiencies of Graham. Thus, there is no case of *prima facie* obviousness. Furthermore, none of the cited references provide a suggestion or motivation to arrive at the bag access of the present claims. Accordingly, Graham and Yanase cannot render the present claims obvious. The rejection under § 103(a) is incorrect.

For the foregoing reasons, the claims under appeal should be allowed.

AUGUST 16, 2005

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